



Legal

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August 12, 2019

The Honorable Greg Abbott
Attorney General
Office of the Attorney General
Attn: Open Records Division
P.O. Box 12548
Austin, Texas 78711

CMRRR:
7018 0040 0000 4129 3689

Re: Request for Attorney General Decision Under Tex. Gov't Code Ann. §552.301
Requestor: Samuel Sinyangwe
Entity: City of Missouri City, Texas ("City")
Date received: July 12, 2019
City ID #: MCAG 19-26

Dear Attorney General Abbott:

On or about Friday, July 12, 2019, the City of Missouri City ("City") received a public information request from Samuel Sinyangwe ("Requestor") via email requesting a great deal of information regarding complaints, policies and use of force events regarding the Missouri City Police Department *See Exhibit A*. On or about Thursday, July 25, 2019, the City's Police Records Supervisor Paula Bowman requested clarification regarding such cases involving force. *See Exhibit B*. On or about Monday, July 29, the Requestor responded, clarifying his request. *See Exhibit C*.

The City has assembled all documents responsive to the request and claims exceptions from disclosure of such information. Pursuant to section 552.301 of the Government Code, the City hereby requests a decision from the Attorney General about whether the requested information is excepted from disclosure under the Public Information Act (the "Act").

The City believes that the responsive information in **Exhibit D** may be confidential by law and therefore excepted from disclosure under Sections 552.101, 552.102, 552.108, 552.130, and 552.136, 552.137, and 552.147. Accordingly, the City submits the information to your office for review. Please note that the information in **Exhibit D** is a representative sample of the information requested, containing about 20% of the total information requested. The City will withhold all responsive information of these categories pending your office's decision. Also, some of the requested information has already been either withheld or made public pursuant to prior requests and decision by your office. The City will rely on such prior rulings and disclosures to the extent they apply.

Arguments

§ 552.108. Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information.

Section 552.108 provides in relevant part:

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution.

Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.-Austin 2002, no writ). Section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 170 (2013) (the release of serial numbers of firearms would interfere with law enforcement by divulging firearm serial numbers that could be used on illegal firearms or be falsely used in a missing weapons report); 7842 (2012) (the release of the firearms list would interfere with law enforcement); 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement); 252 (1980) (Section 552.108 is designed to protect investigative techniques and procedures used in law enforcement); 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted); 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement); 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under section 552.108).

The City asserts that any responsive information that falls within this category, such as internal investigation checklists and use of force guidelines. The release of the information would unduly interfere with law enforcement because internal investigations information gives the public an insight into what standards and practices are common and prohibited for Missouri City police officers, allowing the public to better judge the department’s defensive and offensive capabilities. Furthermore, use of force information allows the public to do the same, and your office has ruled they may be withheld in other cases. Accordingly, the City may withhold the responsive information under section 552.108(b)(1).

§ 552.101. Exception: Information Confidential by Law under Doctrine of Common Law Privacy

Section 552.101 of the Government Code provides, in pertinent part, as follows:

Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

Gov't Code §552.101. Section 552.101, which encompasses common-law privacy, also protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

A. § 552.101 in conjunction with Common-Law Privacy

Dates of Birth. The attorney general has historically concluded that dates of birth of members of the public are not protected under common-law privacy. However, in *Paxton v. City of Dallas*, the Third Court of Appeals concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101 of the Government Code. In its opinion, the Court of Appeals looked to the Supreme Court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, where the supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy. Consequently, dates of birth of members of the public are generally protected under common-law privacy, and such dates of birth have been marked under "101/CLP" and must be withheld.

Financial and Insurance Information. Personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). The material marked "552.101/CLP (insurance)" includes personal financial information, as the material does not relate to a financial transaction between the individual and the City; thus, the information should be excepted from disclosure under 552.101 in conjunction with common-law privacy. More specifically it is an employee's private automobile insurance policy.

Other Personal Information. The following types of information are excepted from required public disclosure under section 552.101 in conjunction with the doctrine of common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress); 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Common-law privacy also protects information relating to mental or physical abuse in the workplace. In addition, court cases which involve mandatory urine testing recognize a privacy interest in records revealing whether or not a person tested had ingested illicit drugs. *See* Open Records Decision No. 455 (1987). The City asserts that the background investigation, marriage, family relationships, illnesses or operations, mental or physical disabilities or restrictions, insurance information, personal finances and investments, drug/alcohol usage, prescription drugs, the nature, source or amount of income, payments, receipts, credits history, assets, car payment, total indebtedness/liabilities, net worth, certain past and present medical conditions, mandatory urine testing results, information on family members and friends, and descriptions of scars and tattoos are highly intimate or embarrassing facts, the release of which would be highly

objectionable to a reasonable person and is not of legitimate concern to the public. Therefore, the City seeks to withhold the information as marked under section 552.101 in conjunction with the doctrine of common-law privacy.

§ 552.102. Exception: Confidentiality of Certain Personnel Information.

§ 552.102 of the Government Code provides as follows:

- (a) Information is excepted from the requirements of Section 552.021 if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter. The exception to public disclosure created by this subsection is in addition to any exception created by Section 552.034. Public access to personnel information covered by Section 552.024 is denied to the extent provided by that section.

Gov't Code § 552.102. A public employee's right to privacy under section 552.102 of the Government Code is considerably narrower than common law privacy under section 552.101, because of the greater legitimate public interest in matters involving public employees. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Generally, section 552.102(a) excepts information about a public employee from disclosure only when the information reveals "intimate details of a highly personal nature." *See* Open Records Decision No. 423 at 2 (1984). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Information in the personnel file concerning date of birth, insurance information, drug/alcohol usage, the nature, source or amount of income, payments, receipts, credit history, bank accounts, past and present medical history, assets, liabilities, net worth, information on friends and neighbors, and description of scars and tattoos constitute "intimate details of a highly personal nature". The release of such information is clearly an unwarranted invasion of personal privacy. Thus, the City may withhold information marked ".102" under Section 552.102(a).

§ 552.130. Exception: Confidentiality of Certain Motor Vehicle Records

§ 552.130 of the Texas Government Code provides, in pertinent part, as follows:

- (a) Information is excepted from the requirements of Section 552.021 if the information relates to:
 - (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
 - (2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

Gov't Code § 552.130. The City takes exception to the disclosure of driver's license numbers, driver's license class, driver's license expiration dates, and motor vehicle identification numbers and registration years under Section 552.130. Accordingly, the City requests to withhold the information as marked.

§ 552.136. Exception: Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers

§ 552.136 of the Texas Government Code provides, in pertinent part, as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Tex. Gov't. Code § 552.136. The City takes exception to the disclosure of any access device numbers including insurance policy numbers. Thus, the City may withhold the marked information under section 552.136.

§ 552.137. Exception: Confidentiality of Certain E-Mail Addresses.

§ 552.137 of the Texas Government Code provides, in pertinent part, as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
 - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
 - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract;
 - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public; or
 - (5) provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of this code, or receiving orders or decisions from a governmental body.
- (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Tex. Gov't. Code § 552.137. The City takes exception to the disclosure of the personal e-mail addresses as marked pursuant to section 552.137. Additionally, the officers and members of the public have not affirmatively consented to the release of their personal or private e-mail addresses. None of the exceptions stated in this section applies to the responsive documents. As such, the City asserts that the marked e-mail addresses may be withheld under section 552.137.

§ 552.147. Social Security Numbers

Section 552.147 of the Government Code was amended by the Eighty-third Legislature and provides as follows:

- (a) Except as provided by Subsection (a-1), the social security number of a living person is excepted from the requirements of Section 552.021, but is not confidential under this section and this section does not make the social security number of a living person confidential under another provision of this chapter or other law.

As such, the City asserts that the marked social security numbers may be withheld under section 552.147.

Conclusion

For the reasons stated above, the City believes the specific information marked in **Exhibit B** should be excepted from disclosure pursuant to the exceptions as discussed above under sections 552.101, 552.102, 552.108, 552.130, 552.136, 552.137, and 552.147.

Should you have any questions or concerns, please do not hesitate to contact me by telephone at 281-403-8500.

Sincerely,



James Santangelo
Assistant City Attorney

Enclosures: as stated.

cc: Paula Bowman, Police Records Supervisor (letter only)

Maria Jackson, City Secretary (letter only)

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